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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,089	03/09/2007	Daniel Smith	DAIRY88.019APC	6303

20995 7590 09/17/2010  
KNOBBE MARTENS OLSON & BEAR LLP  
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IRVINE, CA 92614

EXAMINER
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KING, FELICIA C

ART UNIT	PAPER NUMBER
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1784

NOTIFICATION DATE	DELIVERY MODE
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09/17/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/579,089	<b>Applicant(s)</b> SMITH ET AL.	
	<b>Examiner</b> FELICIA C. KING	<b>Art Unit</b> 1784	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-15, 18, 19, 22, 24, 31-34, 36-49, 51-63 and 65-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-15, 18, 19, 22, 24, 31-34, 36-49, 51-63 and 65-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/30/10</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

**This Office Action is written in response to Applicants' Remarks filed 6/30/10. Claims 1-9, 11-15, 18, 19, 22, 24, 31-34, 36-49, 51-63 and 65-79 are pending.**

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claims 1-4 recite that the protein concentrate is selected from a coagulated renneted milk protein concentrate, a coagulated renneted milk, or a reconstituted coagulated renneted milk protein concentrate. The description of the protein concentrate as recited in claims 1 to 4 was not disclosed in the original presentation of the claims nor is it disclosed in the Specification.

Further, by the amendments made to the claim regarding the characterization of the protein concentrate and that the heating and mixing step now form a "homogenous cheese mass" instead of a "coagulated cheese mass", as was previously claimed, it appears that Applicants are attempting to claim that the coagulation is caused by the immediate action of the rennet enzyme. The description that coagulation occurred due to the addition of rennet was not disclosed in the original presentation of the claims nor is it disclosed in the Specification.

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The closest description of the protein concentrate can be found in PGPub US 2007/0254064, paragraph 0051. Paragraph 0051 describes the protein concentrate being protein capable of forming a homogenous mass upon heating and cooling, and that the protein concentrate may be formed from renneted milk concentrate. There is no mention of the milk protein being "coagulated renneted". The only mention of "coagulated" refers to the mass formed after mixing and heating a milk protein concentrate and a flavor concentrate.

Further, even the preferred embodiment, in paragraphs 0068-0074, does not describe the rennet forming coagulation. Once the rennet treatment is finished, the milk is referred to as treated milk, not coagulated milk. Further, coagulation is attributed to the cooking step and not the application of the enzyme [para 0074].

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. **Claims 1, 4, 5, 9, 11-13, 15, 18, 19, 22, 63, 65-67, 69-72, 76, and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982) in view of Lashkari (GB 1,057,170).**

**Regarding Claims 1 and 11-13:** Johnston discloses a process for making cheese [pg. 5, lines 10-12], having a protein concentrate with a calcium concentration of around 100mM/kg protein [Ex. 1, Ex. 4] and that the protein concentrate can be milk protein concentrate, milk, or reconstituted milk that is exposed to rennet and is coagulated to produce curd [pg. 5, lines 14-22; pg. 6, lines 16-31]. Johnston also discloses mixing in natural flavors to disperse the flavor in the curd [pg.11, lines 1-17]. Johnston also discloses that the heating and mixing step forms a homogenous

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cheese without holding for fermentation [pg. 9, lines 21-28]. Johnston does not disclose providing a flavor concentrate using at least one strain of organism.

Lashkari discloses a cheese flavor composition containing an edible mold which is *Penicillium roqueforti* [col.1, lines 17-24] that can be added to a food composition to provide a cheesy flavor.

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Johnston and Lashkari before him or her to modify the cheese product of Johnston to incorporate the blue cheesy flavor of Lashkari cheese without the need for months of aging/curing to create natural blue cheese as is usual in the art. Johnston's process is specifically directed towards a cheese product that does not require fermentation and the mixture of protein, fat, and flavor.

Lashkari discloses that its flavoring component is highly flavored and does not require further treatment in order to be added to a food component [col. 3, lines 43-46]. Because Johnston discloses the need for a flavor agent by the inclusion of salt and flavor in the process of making the cheese product, it would have been obvious to flavor the cheese product with the blue cheese flavoring of Lashkari in order to give a specific highly flavored product without having to wait for months to produce the flavor as is known in the art. It also would have been obvious to use the flavor concentrate to provide more variety to the consumers, since Johnston discloses flavoring for cheddar, mozzarella, and Gouda cheeses.

**Regarding Claims 4, 65, 66, 67:** Johnston discloses a process of making cheese as discussed in Claim 1 and further discloses shredding the block of cheese which is considered commensurate with dividing the cheese into portions [pg. 10, lines 26-27].

See motivation to combine in claim 1.

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**Regarding Claim 5:** Johnston discloses a process of making cheese as discussed in Claim 1 and further discloses shredding the block of cheese which is considered commensurate with dividing the cheese into portions [pg. 10, lines 26-27].

**Regarding Claims 6 and 60:** Johnston discloses that the cheese is subjected to freezing [pg. 10, lines 26-27].

**Regarding Claims 9 and 63:** Johnston discloses a process of making cheese and further discloses shredding the block of cheese [pg. 10, lines 26-27].

**Regarding Claims 15 and 69:** Johnston discloses adding 1.5% of a flavor compound derived from enzyme modified cheese and 350 ppm butyric acid added to the curd (rennetted milk)[Ex. 1] where the instant claim recites adding .1% to 20%.

**Regarding Claim 18 and 70:** Johnston discloses that the fat source is cream, high fat cream or milk fat [pg. 10, lines 8-10].

**Regarding Claims 19, 22, 71 and 72:** Johnston discloses that the heating step is carried out at 50°C to 90°C for 1 minute to 30 minutes [pg. 9, lines 24-32].

**Regarding Claim 76:** Johnston discloses mixing in high fat cream with the protein concentrate and flavor before heating and mixing [pg. 12, lines 20-26] which is considered to be commensurate with mixing after step b.

**Regarding Claim 79:** Johnston discloses mixing in high fat cream with the protein concentrate and flavor before heating and mixing [pg. 12, lines 20-26].

5. Claims 2, 3, 8, 31, 34, 36-38, 40-43, 45, 49, 51-53, 55-58, 62, 74, 77 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982) in view of Lashkari (GB 1,057,170) and Bernard et al. (US 4,948,613).

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**Regarding Claims 2, 36, 37, 38:** Johnston discloses a process of making cheese as discussed in Claim 1 and further discloses where the product is packaged for refrigeration packaging the cheese for refrigerated storage [pg. 10, lines 26-27; pg. 13, lines 4-5]. Johnston does not disclose application of viable organisms to the surface or allowing cheese to ripen.

Lashkari discloses a cheese flavor composition containing the mold *Penicillium roqueforti* as discussed above in Claim 1.

Bernard discloses a cheese product that is cooled, the surface of the cheese is inoculated with micro-organisms that grow and promote ripening of the cheese [col. 4, lines 48-55].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Johnston, Lashkari, and Bernard before him or her to modify the process of Johnston with the flavor concentrate of Lashkari to include the cooling, surface inoculation and ripening steps of Bernard because Johnston and Bernard both disclose cheese products that are similar to traditionally made cheeses [Bernard col. 2, lines 33-36]. In order to get a more traditional texture and overall organoleptic qualities in the non-traditionally made cheese Bernard discloses that the application of the microbes to the surface of the cheese produces a surface bloom similar to traditional cheese [col. 4, lines 49-55].

**Regarding Claim 3, 51, 52, 53:** Johnston discloses a process of making cheese as discussed in Claims 1 and 2 and further discloses that flavor (which is one of the GRAS ingredients) can be added during the shaping and cooling of step [Claims 1 and 25]. Lashkari discloses a cheese flavor composition containing the mold *Penicillium roqueforti* as discussed above in Claim 1.

Bernard discloses a cheese product that is cooled, the surface of the cheese is inoculated with micro-organisms that grow and promote ripening of the cheese as discussed above in Claim 2.

See motivation to combine as stated above in claim 2.

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**Regarding Claims 8, 62:** Johnston discloses a process of making cheese as discussed in Claim 1 but does not disclose applying viable microorganisms to the surface and allowing to ripen. However, Bernard discloses applying viable organisms to the surface and allowing to ripen as discussed above in Claims 2 and 3.

See motivation to combine as stated above in claim 2.

**Regarding Claims 31 and 45:** Johnston discloses a process of making cheese as discussed in Claims 2 and 3 and further discloses shredding the block of cheese which is considered commensurate with dividing the cheese into portions [pg. 10, lines 26-27].

**Regarding Claim 32 and 46:** Johnston discloses as discussed in claims 2 and 3 and also discloses that the cheese is subjected to freezing [pg. 10, lines 26-27].

**Regarding Claims 34 and 49:** Johnston discloses as discussed in claims 2 and 3 and also discloses shredding the block of cheese [pg. 10, lines 26-27].

**Regarding Claims 40 and 55:** Johnston discloses as discussed in claims 2 and 3 and also discloses adding 1.5% of a flavor compound derived from enzyme modified cheese and 350 ppm butyric acid added to the curd (rennetted milk)[Ex. 1] where the instant claim recites adding .1% to 20%.

**Regarding Claims 41 and 56:** Johnston discloses as discussed in claims 2 and 3 and also discloses that the fat source is cream, high fat cream or milk fat [pg. 10, lined 8-10].

**Regarding Claims 42, 43, 57, and 58:** Johnston discloses as discussed in claims 2 and 3 and also discloses that the heating step is carried out at 50°C to 90°C for 1 minute to 30 minutes [pg. 9, lines 24-32].

**Regarding Claim 74:** Johnston discloses as discussed in claim 3 and also discloses that the flavor is added before heating and mixing [pg. 12, lines 24-32].



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**Regarding Claim 77:** Johnston discloses as discussed in claim 2 and also discloses mixing high fat cream with the protein concentrate and flavor before heating and mixing [pg. 12, 20-26] which is considered to be commensurate with mixing after step b.

**Regarding Claim 78:** Johnston discloses as discussed in claim 3 and also discloses mixing high fat cream with the protein concentrate after forming the protein concentrate [pg. 12, 20-26].

**6. Claims 7 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982) and Lashkari (GB 1,057,170) as applied to claims 1, 6 and 4, 60 above and in further view of Chikuma (US 3,091,539).**

**Regarding Claims 7 and 61:** Johnston discloses a process of making cheese as discussed in Claim 1 but does not disclose that following freezing the cheese is thawed and allowed to further ripen. However, Chikuma discloses a method of making a cheese product by freezing, thawing and further ripening curd [col. 3, lines 1-6].

At the time of the invention it would have been obvious to one of ordinary skill in the art having the teachings of Johnston, Lashkari, and Chikuma before him or her to modify the process of Johnson to incorporate a freezing step, thawing and ripening step in order to stop any undesired enzymatic reactions by freezing and to allow for further ripening of the cheese to enhance the flavor of the cheese product.

**7. Claims 14 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982) and Lashkari (GB 1,057,170) applied to claims 1 and 4 above and in further view of Bauman (US 2,965,492).**

**Regarding Claims 14 and 68:** Johnston discloses a process of making cheese as disclosed in Claim 1 and discloses that the lactic acid and butyric acid can be added to provide flavor [pg. 12,

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lines 20-26]. Johnston does not disclose that the flavor concentrate is additionally a flavor-enhancing bacterium that produces lactic acid, propionic acid, or butyric acid.

Bauman discloses preparing a dried cheese product where the condensed milk is inoculated with lactic acid starter and *Penicillium roqueforti* [col. 4, lines 55 - 64].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Johnston, Lashkari, and Bauman before him or her to incorporate a lactic acid starter in order to help implant *P. roqueforti*, to serve as fuel for *P. roqueforti*, and to further produce flavor in the cheese product.

**8. Claims 24 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982) and Lashkari (GB 1,057,170) applied to claims 1 and 4 above and in further view of The American Cheese Society**

(<http://web.archive.org/web/20040917204831/http://www.cheesesociety.org/displaycommon.cfm?an=1&subarticlenbr=5>).

**Regarding Claims 24 and 73:** Johnston discloses a process of making cheese as disclosed in Claim 1 and further discloses packaging the cheese for refrigerated storage [pg. 10, lines 26-27; pg. 13, lines 4-5]. Johnston does not disclose storing the cheese at temperatures between 5°C to 35°C and a relative humidity of 80% or greater.

The American Cheese Society discloses that cheese should be stored between 35°F and 45°F (1.6°C to 7.2°C) at a high humidity level [2nd paragraph].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Johnston, Lashkari, and The American Society to store the cheese at 35°F and 45°F (1.6°C to 7.2°C) and at a high humidity because storage under these condition are well known in the art and help retain freshness and organoleptic quality of the cheese.

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Further, although The American Cheese Society does not disclose the same temperature range as in the instant claim, one having ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions taught by The American Society overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. *In re Malagari* 182 USPQ 549,553.

Further, although The American Cheese Society does not explicitly disclose the humidity as higher than 80% it does disclose that the humidity must be high, therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the humidity level for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272.

**9. Claims 33, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982) and Lashkari (GB 1,057,170) and Bernard et al. (US 4,948,613) as applied to claims 2 and 3 above and in further view of Chikuma (US 3,091,539).**

**Regarding Claims 33, 47, 48:** Johnston discloses a process of making cheese as discussed above. Johnston does not disclose that following freezing the cheese is thawed and allowed to further ripen.

Chikuma discloses a method of making a cheese product by freezing, thawing and further ripening curd [col. 3, lines 1-6].

At the time of the invention it would have been obvious to one of ordinary skill in the art having the teachings of Johnston, Lashkari, Bernard, and Chikuma before him or her to modify the process of Johnson to incorporate a freezing step, thawing and ripening step in order to stop any undesired enzymatic reactions by freezing and to allow for further ripening of the cheese to enhance the flavor of the cheese product.

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**10. Claims 39 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982) and Lashkari (GB 1,057,170) and Bernard et al. (US 4,948,613) as applied to claims 2 and 3 above and in further view of Bauman (US 2,965,492).**

**Regarding Claims 39 and 54:** Johnston discloses a process of making cheese as disclosed in Claim 1 and discloses that the lactic acid and butyric acid can be added to provide flavor [pg. 12, lines 20-26]. Johnston does not disclose that the flavor concentrate is additionally a flavor-enhancing bacterium that produces lactic acid, propionic acid, or butyric acid.

Bauman discloses preparing a dried cheese product where the condensed milk is inoculated with lactic acid starter and *Penicillium roqueforti* [col. 4, lines 55 - 64].

At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Johnston, Lashkari, Bernard, and Bauman before him or her to incorporate a lactic acid starter in order to help implant *P. roqueforti*, to serve as fuel for *P. roqueforti*, and to further produce flavor in the cheese product.

**11. Claims 44 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982), Lashkari (GB 1,057,170), and Bernard et al. (US 4,948,613) as applied to claims 2 and 3 above and in further view of The American Cheese Society**

(<http://web.archive.org/web/20040917204831/http://www.cheesesociety.org/displaycommon.cfm?an=1&subarticlenbr=5>).

**Regarding Claims 44 and 59:** Johnston discloses a process of making cheese as disclosed in Claim 1 and further discloses packaging the cheese for refrigerated storage [pg. 10, lines 26-27; pg. 13, lines 4-5]. Johnston does not disclose storing the cheese at temperatures between 5°C to 35°C and a relative humidity of 80% or greater.

The American Cheese Society discloses that cheese should be stored between 35°F and 45°F (1.6°C to 7.2°C) at a high humidity level [2nd paragraph].

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At the time of the invention, it would have been obvious to one of ordinary skill in the art having the teachings of Johnston, Lashkari, Bernard, and The American Society to store the cheese at 35°F and 45°F (1.6°C to 7.2°C) and at a high humidity because storage under these conditions are well known in the art and help retain freshness and organoleptic quality of the cheese.

Further, although The American Cheese Society does not disclose the same temperature range as in the instant claim, one having ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions taught by The American Society overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. *In re Malagari* 182 USPQ 549,553.

Further, although The American Cheese Society does not explicitly disclose the humidity as higher than 80% it does disclose that the humidity must be high, therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the humidity level for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272.

**12. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston (WO 03/069982) and Lashkari (GB 1,057,170) and Bernard et al. (US 4,948,613) as applied to claims 2 and 3 above and in further view of and Skovhauge et al. (US 4,655,127).**

**Regarding Claim 75:** Johnston discloses a process of making cheese as discussed above. Johnston does not explicitly disclose that after cooling, the product is divided into consumer portions.

Skovhauge discloses that after cooling (5°C to 15° C), cheese grains, formed from protein concentrate, are filled in to a package [col. 4, lines 22-33] which has been interpreted as a consumer portion.

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At the time of the invention it would have been obvious to one of ordinary skill in the art having the teachings of Johnston, Lashkari, Bernard and Skovhauge before him or her to wait until the cheese product was cooled to a desirable temperature before portioning out for the consumer because the warm molten mass would not be able to retain its proper shape (block, shreds) and the property quantity (oz. lb.) usually provided to consumers.

***Response to Arguments***

13. Applicant's arguments, see pages 10-14, filed 6/30/10, with respect to the rejections of claims 1-9,11-15,18,19,22,24,31-34,36-49,51-63 and 65-79 under Blazey et al. (US 6,177,118) in view of various secondary references Lashkari (GB 1,057,170), and Dybing et al. (WO 02/082917)(Skovhauge et al. (US 4,655,127) and Groesbeck et al. (US 5,455,051) as evidence), Bernard et al. (US 4,948,613), Chikuma (US 3,091,539), Bauman (US 2,965,492), and The American Cheese Society have been fully considered and are persuasive in light of amendments made to the claims. Therefore, the rejection has been withdrawn.

14. However, upon further consideration, new grounds of rejection are made as discussed in the above office action.

Claims 1, 4, 5, 9, 11-13, 15, 18, 19, 22, 63, 65-67, 69-72, 76 and 79 over Johnston (WO 03/069982) in view of Lashkari (GB 1,057,170).

Claims 2, 3, 8, 31, 34, 36-38, 40-43, 45, 49, 51-53, 55-58, 62, 74, 77 and 78 over Johnston (WO 03/069982) in view of Lashkari (GB 1,057,170) and Bernard et al. (US 4,948,613).

Claims 7 and 61 over Johnston (WO 03/069982), Lashkari (GB 1,057,170) and Chikuma (US 3,091,539).

Claims 14 and 68 over Johnston (WO 03/069982), Lashkari (GB 1,057,170) and Bauman (US 2,965,492).

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Claims 24 and 73 over Johnston (WO 03/069982), Lashkari (GB 1,057,170) The American Cheese Society.

Claims 33, 47, and 48 over Johnston (WO 03/069982), Lashkari (GB 1,057,170) and Bernard et al. (US 4,948,613) and Chikuma (US 3,091,539).

Claims 39 and 54 over Johnston (WO 03/069982), Lashkari (GB 1,057,170), Bernard et al. (US 4,948,613), and Bauman (US 2,965,492).

Claims 44 and 59 over Johnston (WO 03/069982), Lashkari (GB 1,057,170) Bernard et al. (US 4,948,613) and The American Cheese Society

Claim 75 over Johnston (WO 03/069982), Lashkari (GB 1,057,170), Bernard et al. (US 4,948,613) and Skovhauge et al. (US 4,655,127).

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Hale et al. (EP 0089777) discloses a modifying a milk protein with a coagulating enzyme such as rennet and then mixing the curd with additives and forming a foodstuff or foodstuff precursor.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on

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the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FELICIA C. KING whose telephone number is (571)270-3733. The examiner can normally be reached on Mon- Thu 7:30 a.m.- 5:00 p.m.; Fri 7:30 a.m. - 4:00 p.m. alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. K./

Examiner, Art Unit 1784

/Timothy M. Speer/

Primary Examiner, Art Unit 1784